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The Truck-Size Loophole in the EPA's Car Emissions Rule

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Automakers can choose how they meet the standard. As long as their fleet as a whole is in compliance, they can keep making pretty much whatever cars they want.

If you've been on a road in the last 10 years, you've probably noticed that cars have gotten bigger. SUVs and pickup trucks have replaced compacts and sedans. And those bigger cars seem to keep getting even bigger and more dangerous for those made to share roads with them. In writing its new tailpipe emissions standards, finalized last week, the Environmental Protection Agency acknowledged that shift and its own role in supersizing America's cars. So what impact, if any, will these new rules have on the problem?

While the new emissions rules have been praised in most coverage for tightening standards and thus speeding the transition to electric vehicles, they also preserve long-standing special treatment for big trucks and SUVs, which exempt larger cars from more stringent emissions standards. The EPA has made a little-noticed attempt in the rule to keep companies from exploiting the sorts of loopholes they have in the past, but industry giveaways that were added into the final rule could undermine their ability to reduce emissions. When the rules take effect, for instance, starting with cars in the 2027 model year, Ford Super Duty pickups will reportedly be able to emit more than three times as much carbon dioxide as light-duty pickups like the still very large Ford F-150, and nearly four times as much as a passenger car.

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getting larger and larger because the larger the vehicle, the weaker the standard."

That's a stubborn, decades-old facet of how America regulates. Since the 1970s, passenger and non-passenger vehicles have been subject to different rules. When corporate average fuel economy, or CAFE, standards were first implemented in 1975, trucks and SUVs were predominately used by farmers, construction workers, and others who needed features like big towing capacities or off-road capabilities to do their jobs. The larger vehicles with those features tended to be less efficient. Trucks and SUVs were thus carved out of the more stringent rules applied to passenger vehicles. Carmakers spotted an opportunity, though: If they could classify their cars as non-passenger vehicles, they'd be subject to less stringent regulations. All they had to do was upsell consumers for features they didn't need and—as a sweetener for shareholders—that they could charge more for.

And so they did. Thanks in no small part to automaker lobbying, that bifurcated system has held for the last half-century; the broad outlines of a passenger and non-passenger distinction are mandated by Congress. In some ways, that special treatment was supercharged via a shift over the last 20-plus years to so-called "attribute-based" standards, which not only treated cars differently based on their size (footprint) but allowed companies to meet boutique standards based on the selection of cars they sold. As I wrote last week, the EPA's regulatory impact analysis for its new tailpipe emissions rules notes that such changes—and automakers' eagerness to exploit them—have dramatically changed the kinds of cars Americans drive. A decade after "attribute-based" standards were codified in 2011's CAFE standard updates, the EPA reports that the percentage of new vehicle sales classified as cars and trucks virtually flipped. As of 2021, 63 percent of new cars were classified as

light-duty trucks, including SUVs, up from 36 percent in 2012. The Big Three U.S. automakers (Stellantis, Ford, and GM) have largely stopped making sedans, leaning into heavyweight bestsellers like the Chevy Silverado. And while the Big Three still struggle to turn a profit on their electric vehicles, big, gas-powered trucks and SUVs are a cash cow, generating more profits per unit than sedans.

Here's where the new rules come in. Perhaps most importantly, standards for larger cars were weakened from those in the initial proposal released last spring. The initial rule outlined that the medium-duty fleet would be subject to emissions targets of 438 grams of carbon dioxide per mile, or g/mi, for model year 2027 and 275 g/mi in 2032. The final rule targets are more lenient: 461 g/mi for model year 2027 and 275 g/mi in model year 2032. Light-duty vehicles, on the other hand, will be held to a greenhouse gas emissions goal of just 82 g/mi that year.

Happily, some more vehicles will be subject to those rules too. The EPA's tailpipe emissions standards change its definition of medium-duty passenger vehicles to include any pickup truck with a gross vehicle weight rating, or GVWR, of 14,000 pounds or less and a "work factor" (essentially, hauling capabilities) of 4,500 pounds or less. GVWR refers to the maximum weight capacity of a vehicle, including the weight of the car itself, passengers, and cargo. Also included in that category will now be "pickups with a GVWR below 9,500 pounds and a fixed interior length cargo area of less than eight feet regardless of whether the vehicle work factor is above 4,500 pounds." Previously, pickups with a GVWR of 10,000 pounds or below were generally included in the "medium-duty" category.

Additional stipulations around cargo-area length and work factors—essentially, making it harder to classify certain vehicles as non-passenger vehicles—are meant, the EPA writes in its report, to prevent manufacturers from reclassifying pickups so as to avoid stricter regulations, as they have in the past. As the agency also explains, the change is meant to address electric trucks whose weight—a product, in part, of the heavy batteries needed to power them—would mean they were classified as medium-duty passenger vehicles rather than light-duty passenger vehicles.

That's a broadly positive development for those hoping to see tighter rules on gas guzzlers: Some big trucks that were once subject to less strict regulations could now be subject to the more stringent version and treated as light-duty vehicles. The new definition is aimed mostly at future pickups—either heavy electric-powered trucks or those that automakers might start making in order to avoid stricter emissions rules. The EPA states that there are currently "little to no" internal combustion engine–powered vehicles that would be reclassified under its new definition for mid-duty passenger vehicles.

Auto manufacturers probably aren't happy about all this. While they got some of their wishes around the margins on this front, like lowering various cutoff points, in its comments on the initial rule, the Alliance for Automotive Innovation—a powerful trade association for the industry—requested the EPA maintain the previous definition of MDPVs to preserve "flexibility" for heavier pickups given the "very aggressive standards in both the Light- and Medium-Duty GHG rules." The AAI also requested these changes take effect three years later than the rule ultimately mandated.

The real problem with the new rules—the area where they offer automakers the biggest loophole—is that they give manufacturers tremendous leeway to

decide how they meet federal standards. That's not all up to these rules, in particular. As of Congress's 2007 update to CAFE standards, companies are held to different standards based on the selection of vehicles they sell. They just have to ensure that the *entire fleet* of auto offerings complies with those rules. In general, automakers that make more big trucks are held to lower standards than those that focus on compacts.

Compliance is judged based on a system of credits and debits. Cars that exceed emissions standards for a given year generate credits, while those that fall below them generate debits. Those can be averaged across relevant classifications so that credits generated by compliant passenger vehicles, for example—like an E.V.—can be used to offset debits generated by more heavily emitting, gas-powered light-duty trucks, including SUVs. They can be "banked" so that credits from "over-compliance" one year can offset debits in a subsequent year. Credits can be sold off to other companies too, creating a major opportunity for companies that only make E.V.s to sell them to competitors.

Automakers can further generate credits by using certain low-emissions technologies. If companies can show that a car is using novel technologies to reduce emissions—by putting solar panels on the roof, for instance—they generate a certain amount of credits that count toward their overall compliance score, whether or not that technology actually reduces emissions in the real world. In a concession to automakers, the EPA has given manufacturers a longer timeline to take advantage of credits generated by using more efficient refrigerants in their air conditioning systems, despite the fact that such coolants have already been widely adapted. It also opted to extend the EPA's controversial "off-cycle credit" program through 2032, longer than initially proposed, despite evidence that it over-credits

technologies that have a minimal impact on vehicle emissions. While E.V.s will no longer be able to take advantage of such credits—their initial purpose was to reduce gas usage—hybrids are still able to take advantage of them. Critics also argue that EPA is being overly generous in its assessment of how often plug-in hybrids actually run on electricity versus gas, distorting their potential emissions impact.

And whereas companies generally haven't been able to apply credits generated in passenger and light truck segments to their mid-duty classes, those vehicles that would be newly classified as MDPVs under the new rule will, under an "interim provision," be able to use credits from battery electric vehicles or fuel cell electric vehicles in that category—subject to light-duty standards—toward compliance in their mid-duty segments so long as they're used to offset any debits generated by light-duty trucks first.

The danger of such changes, Becker argues, is that creative accounting on the part of auto manufacturers can allow them to largely continue with business as usual when it comes to their gas-guzzling offerings, balancing out their bread and butter—hulking, combustion-powered trucks and SUVs—with useless technologies and "compliance vehicles" that boost their scores. "This rule allows more inefficient giant trucks," Becker says. "Essentially, in exchange for making E.V.s, there are no significant improvements required from carbon emissions from gas-powered fleets."

The EPA disputes this. "The nature of fleet-wide standards, with averaging, banking and trading, is that some vehicles can emit more than their footprint targets if automakers produce other vehicles that emit their footprint targets,"

EPA spokesperson Cathy Milbourn said over email. “However, we believe the history of our standards, and of averaging banking and trading in general, shows that using this approach encourages the development and deployment of new technologies which leads to over-compliance for some vehicles, and provides the basis for future progress.”

In recent memory, little-noticed changes by the EPA have drastically changed the way Americans drive. Cognizant of that fact, the agency has attempted to mitigate such unintended consequences in fits and starts. The EPA could not single-handedly abolish the double standard in place for massive vehicles to skirt regulations. But the agency does admit that it could have done more, like cutting down on potentially flimsy credits and making a greater number of larger vehicles subject to more stringent emissions rules. The EPA notes that it declined to make “fundamental changes” along those lines “due to the potential disruption such an approach would have both for the vehicle industry and for consumers needing highly capable work vehicles.” If the EPA really wants to tackle transportation emissions, though, massive disruptions to the auto industry are inevitable.

For now, the auto industry’s top brass doesn’t seem to be sweating. “These adjusted EV targets—still a stretch goal—should give the market and supply chains a chance to catch up,” John Bozzella, president and CEO of the Alliance for Automotive Innovation, wrote in a recent press statement. He praised the EPA for preserving drivers’ “ability to choose the vehicle that’s right for them.” Conveniently, those rules also seem poised to preserve the industry’s ability to keep making the giant gas guzzlers that drive their profits.

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